

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
FILE

RECEIVED

JUN 25 1992

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Amendment of Section 90.494)
of the Commission's Rules and)
Regulations Concerning Shared Use)
of 900 MHz Paging Frequencies)

RM-7986

To: The Commission

REPLY COMMENTS
OF THE
COMTECH, INC.

ComTech, Inc. ("ComTech") respectfully submits, pursuant to Section 1.405(b) of the Commission's Rules, 47 C.F.R. §1.405(b), its Reply Comments in response to the Comments filed in the above-referenced proceeding.

ComTech is the operator of wide-area 900 MHz PCP systems throughout California and numerous other states. ComTech's northern California PCP system became operational and ComTech began offering service to the users on May 1, 1991. Since then the system has grown to 90 transmitters in California and Nevada and serves over 18,000 subscribers. The only means by which ComTech could enter the 900 paging market and compete on a state wide basis was through the use of PCP frequencies and satellite control.

Comtech has been a cellular reseller in the State of California for over five years and decided to offer paging services to its existing customers and potential customers about three years ago. ComTech quickly discovered that there were no state wide Common Carrier frequencies or control frequencies available in California that would allow ComTech to build a system to compete

No. of Copies rec'd
List A B C D E

0+6

with the other state wide carriers. Therefore, ComTech elected to construct PCP systems throughout the region.

The concept that granting exclusivity to the PCP channels would create a glut of filings and speculators is not supported by any facts. Comtech's experience when searching for a Common Carrier frequency in California was that most of the unused 900 MHz frequencies were being warehoused or held by existing operators for future expansion. Although there are some Common Carrier license holders in California that can be described as speculators, they are by far in the minority. Given the fact that the APCP proposal requires interconnect, construction and minimum power levels, ComTech can assume that the opportunity of obtaining an exclusive PCP assignment would cause less licensing "pressure" than the old Common Carrier frequencies.

Several of the respondents indicated that there should be some loading criteria in addition to the construction requirements. Although Comtech does not feel that this is necessary, ComTech would not oppose any loading plan that could be easily implemented and enforced. Comtech would also have no objection to a formula along the lines of the 220 MHz frequencies that requires coverage in the top MSAs. The top sixty cities should be covered in the initial three hundred transmitters and the time frame for construction should not exceed two years with 50% of the stations installed in the first twelve months. Each of these proposals are reasonable and would discourage speculators. However, any rules

adopted should be easy to administer, clear and not unduly burdensome to operators.

Comtech supports MTEL's position regarding deregulation of the Common Carrier frequencies. Currently Comtech actively operates and competes for paying subscribers on both a common carrier and private carrier frequencies in the State of California. Pricing competition in the market is vigorous. The service offerings cover a wide range of products and features. The California PUC policy of open entry has resulted in many Common Carrier and PCP systems being constructed in California. However, MTEL's request is outside of the scope of this proceeding and should not deter the Commission from pursuing the rule changes proposed by APCP on a fast track.

It is Comtech's belief that as long as there is open entry, competition will be assured and prices will remain competitive. APCP's proposal merely extends the available pool of frequencies and guarantees open entry in future years.

MTEL's comments that the non-commercial users are not provided for is contrary to the facts. One of the reasons that so few people file for the non-commercial frequencies is that as competition increases and the price for wide area paging service drops, it becomes exceedingly difficult to justify a privately owned paging system. A recent review of several large competitive quotations in California showed prices as low as \$7.95 a month to rent new Bravo Plus pagers, along with an offer to install a transmitter at the customer's location to ensure coverage for an

order of 100 pagers. Under these conditions consumers will rent, not purchase, their own system. APCP's proposal to reassign the frequencies to people that can use them is consistent with market trends in the paging business. However, frequencies can be expected to remain available for companies which still demand private paging systems.

In reference to MTEL's comments on page 8 on "Lack of Orderly and Fair Process", it would stand to reason that the people that have the greatest interest in the APCP proposal would be the current users of the 900 MHz frequencies. Most of these entities are also members of APCP and have had the opportunity to ensure their participation in any changes resulting from this proceeding. However, the issue in this proceeding is not about fairness, it's about competition. APCP's proposal encourages competition on a regional and national basis. As a cellular reseller for the past eight years ComTech has had first hand knowledge of the shortcomings of limiting competition to two carriers. National and regional paging rates will not be competitive until there are six or more competitors. APCP's proposal grants exclusivity, and requires construction, which promotes competition.

Comments that certain individuals will directly benefit because they have already filed for frequencies throughout the country is not relevant. During the past months the exclusivity issue has been discussed and reviewed at open meetings held by APCP. In addition, the FCC has had an open door policy regarding the discussion of this subject. The companies supporting

exclusivity have for the most part been actively constructing PCP systems prior to the freeze. If these people have a "headstart" advantage it is because of timing, not as a result of preferential treatment. Any operator could have made the same applications for 900 MHz PCP service. As long as the existing PCP licensees are bound by the proposed construction requirements they do not have a significant advantage.

Some of the comments indicated that the nationwide paging needs of customers were being met by existing carriers. The true demand for nationwide and regional paging service will not be clearly known until there is sufficient competition to ensure vigorous competitive pricing. There is a certain demand at today's price and quite another demand in a highly competitive environment.

WHEREFORE, COMTECH, INC. respectfully requests that the Commission adopt a Notice of Proposed Rule Making and amend Section 90.494 of its rules consistent with APCP's Petition.

Respectfully submitted,

COMTECH, INC.

By: 

Jerry Nelson, President
185-D Commerce Circle
Sacramento, CA 95815
(916) 567-3222

Of Counsel:
David E. Weisman, Esquire
Alan S. Tilles, Esquire
Meyer, Faller, Weisman and
Rosenberg, P.C.
4400 Jenifer Street, N.W.
Washington, D.C. 20015
(202) 362-1100
Date: June 25, 1992

CERTIFICATE OF SERVICE

I, Ruth A. Buchanon, a secretary in the law firm of Meyer, Faller, Weisman & Rosenberg, P.C. hereby certify that I have on this 25th day of June 1992, sent via First Class United States Mail, postage prepaid, a copy of the foregoing "Reply Comments" to the following:

*

Ralph A. Haller, Chief
Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 5002
Washington, D.C. 20554

*

Richard J. Shiben, Chief
Land Mobile and Microwave Division
Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 5202
Washington, D.C. 20554

*

Rosalind K. Allen, Chief
Rules Branch
Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 5126
Washington, D.C. 20554

Judith St. Ledger-Roty, Esquire
Lynn E. Shapiro, Esquire
Kathleen A. Kirby, Esquire
Reed, Smith, Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036
Counsel to Paging Network, Inc.

Mark A. Stachiw, Esquire
Carl W. Northrop, Esquire
Bryan, Cave, McPheeters & McRoberts
700 13th Street, N.W.
Suite 700
Washington, D.C. 20005
Counsel to Pactel Paging

Richard E. Wiley, Esquire
R. Michael Senkowski, Esquire
Eric W. DeSilva, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Counsel to Mobile Telecommunication Technologies Corp.

Gerald S. McGowan, Esquire
George L. Lyon, Jr., Esquire
Lukas, McGowan, Nace & Gutierrez, Chartered
1819 H Street, N.W.
Suite 700
Washington, D.C. 20006
Counsel for Dial Page, L.P.

Lawrence M. Miller, Esquire
Steven C. Schaffer, Esquire
Schwartz, Woods & Miller
Suite 300
1350 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel to Dial-A-Page, Inc.


Ruth A. Buchanan

* - Via Hand Delivery